

ST 01-23

Tax Type: Sales Tax

Issue: Statute of Limitations Application

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 01-ST-0000
v.)	IBT # 0000-0000
)	
ABC PRODUCTS, INC.)	
)	Claim for Credit or Refund
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, appearing *pro se*, for ABC Products, Inc.

Synopsis:

ABC Products, Inc. (“taxpayer”) filed a Claim for a credit or refund of sales taxes paid for the time period of November 1997. The Department of Revenue (“Department”) issued a Notice of Tentative Denial of the Claim on the basis that the taxpayer’s claim is barred by the statute of limitations. The taxpayer timely protested the Notice of Tentative Denial. A hearing was held during which the taxpayer contended that the claim should be granted because the taxpayer timely filed a request for a refund, although it was not filed on the form that the Department argued should have been filed. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On December 23, 1997, the taxpayer had a sales tax credit with the Department in the amount of \$1,307. (Dept. Ex. #3)
2. On May 4, 2000, the taxpayer filed a Form ST-15, Business Information Update (Sales and Use Tax), with the Department. The form indicates that the taxpayer sold its business on December 31, 1999. In May of 2000 the taxpayer also filed a Form IL-1120-ST that indicated that it was a final return for the taxpayer. (Taxpayer Ex. #1, #2)
3. On January 31, 2001, the taxpayer filed a Form ST-6, Claim for Verified Overpayment, with the Department. The Claim requests a refund of the \$1,307 credit from the liability period of November 1997. (Dept. Ex. #2)
4. On February 23, 2001, the Department issued a Notice of Tentative Denial of Claim to the taxpayer for the period of November 1997. The Notice denied the taxpayer's claim for the amount of \$1,307. A copy of the Notice was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

Section 6 of the Retailers' Occupation Tax Act ("ROTA") (35 ILCS 120/1 *et seq.*) provides in relevant part as follows:

“[A]s to any claim for credit or refund filed with the Department on and after each January 1 and July 1 no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under this Act) more than 3 years prior to such January 1 and July 1, respectively, shall be credited or refunded, except that if both the Department and the taxpayer have agreed to an extension of time to issue a notice of tax liability as provided in Section 4 of this Act, such claim may be filed at any time prior to the expiration of the period agreed upon.” 35 ILCS 120/6.

Section 6a of the ROTA provides in part that “[c]laims for credit or refund shall be prepared and filed upon forms provided by the Department.” (35 ILCS 120/6a).

The Department contends that the taxpayer did not file its claim on the proper form within the time period allowed in section 6 of the ROTA, and therefore the claim must be denied.

The taxpayer states that his accountant was responsible for filing the taxpayer’s returns, and his accountant filed the ST-15 and IL-1120-ST believing that they would generate a refund. The taxpayer acknowledges that the ST-6 was filed beyond the date allowed by the statute, but states that he believed the refund would be issued after the filing of the final return and the ST-15.

The form that must be filed with the Department to generate a refund is Form ST-6, Claim for Verified Overpayment. The taxpayer’s overpayment was made in December of 1997, and its Form ST-6 was not filed until January 31, 2001, which was one month late under section 6 of the ROTA. Although the Form ST-15 and final return were filed within the limitations period, those forms do not notify the Department that the taxpayer would like its credit refunded. The ST-15 is an information form that simply indicates that the taxpayer sold its business. The selling of a business does not necessarily indicate that a refund is warranted because, as the Department’s counsel indicated, the taxpayer could have had its credit applied to another taxpayer. The Department must, however, be notified as to what to do with the money. It is necessary for the taxpayer to file the proper form so that the Department has notice as to whether to refund the overpayment. Because the taxpayer did not file a claim form within the limitations period, the claim must be denied.

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Tentative Denial of Claim be upheld.

Linda Olivero
Administrative Law Judge

Enter: October 30, 2001